



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| | | | | |
|----------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/825,141 | 04/15/2004 | Hiroaki Kuninobu | NEC FQ5-624 | 7831 |
| 27667 | 7590 | 03/25/2010 | EXAMINER | |
| HAYES SOLOWAY P.C. 3450 E. SUNRISE DRIVE, SUITE 140 TUCSON, AZ 85718 | | | MAHMOUDZADEH, NIMA | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2477 | |
| | | | NOTIFICATION DATE | DELIVERY MODE |
| | | | 03/25/2010 | ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

admin@hayes-soloway.com
smckniff@hayes-soloway.com
nsoloway@hayes-soloway.com

| | | | |
|-----------------------------------------------------------------------|--------------------------------------|------------------------------------------|--|
| Advisory Action Before the Filing of an Appeal Brief | Application No. 10/825,141 | Applicant(s) KUNINOBU, HIROAKI | |
| | Examiner NIMA MAHMOUDZADEH | Art Unit 2477 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-29.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/NIMA MAHMOUDZADEH/
 Examiner, Art Unit 2477

/Gregory B Sefcheck/
 Primary Examiner, Art Unit 2477

Continuation of 11. does NOT place the application in condition for allowance because: On page 2 of the applicant's response, the applicant argued that the prior art of the record fail to teach "data transmission works in a predetermined communication protocol" and "without controlling the control information according to the predetermined communication protocol" of claim 1. The examiner respectfully disagrees. As shown in paragraph [0007], and Fig. 1, upon receipt of the packet P1, the CR1 searches a label table held therein using a value of the label L11 added to the packet P1, and determines an output line 1020-1 and a label L12 (112) for outputting. The routing table is considered one element of predetermined communication protocol in order to make the MPLS routing work in accordance to OSI model. Also, as it was explained in the previous action and Fig. 1 of Akahane, the encapsulated information contains the control data that is not being used when the MPLS device is routing the packets utilizing the label's control information. On page 3 of the applicant's response, the applicant argued that the prior art of the record fail to teach "a simple transfer of unaltered control information from the Data Communications Channel (DCC)" of claim 3. The examiner respectfully disagrees. As shown in, paragraph [0006] of Booth, the bytes of the section overhead are reserved for a section data communication channel (DCC) that is traditionally used to communicate control information. Also, Fig. 3 discloses the packet structure that comprises header and payload which the payload consists of user data. The remaining rejected claims maintain their rejection in accordance to above explanations.